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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
vs.)	Criminal Action
)	
VINCENT KIEJZO,)	No. 20-40036-TSH
Defendant)	
)	
)	
)	

BEFORE: MAGISTRATE JUDGE DAVID H. HENNESSY

MOTION HEARING

Donohue Federal Building
595 Main Street
Worcester, Massachusetts 01608

September 17, 2021

Transcribed by Valerie A. O'Hara
Official Court Reporter
John Joseph Moakley United States Courthouse
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Boston, MA 02210
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1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by KRISTEN NOTO,
4 ASSISTANT UNITED STATES ATTORNEY, 595 Main Street, Worcester,
Massachusetts 01608;

5 For the Defendant:

6 Federal Defender's Office, by SANDRA GANT, ATTORNEY,
7 51 Sleeper Street, 5th Floor, Boston, Massachusetts 02210.

PROCEEDINGS

THE CLERK: United States District Court is now in session, the Honorable David Hennessy presiding. You may be seated.

Today is September 17th, 2021. We're on the record in the matter of United States vs. Vincent Kiejzo, Docket Number 20-CR-40036.

Will counsel please identify themselves for the record.

MS. NOTO: Good morning, your Honor, Kristen Noto for the United States.

THE COURT: Good morning, Ms. Noto.

MS. GANT: Good morning, your Honor, Sandra Gant, for the federal defender's on behalf of Mr. Kiejzo, who is seated to my left.

THE COURT: Good morning, Ms. Gant. Okay. This is a hearing on a discovery motion. Hang on one second. This is a hearing on a discovery motion that the defense filed in this case. We tried to do this hearing a couple of times and ran into some logistical or other issues, and so here we are.

I mention that only because I went through the filings back in August, when we were originally on, and I guess owing to a memory that's not getting any better, I had to go through it again to refresh my recollection, so I've

1 been through the papers a few times.

2 I think it's worthwhile to mention a couple of
3 principles upfront. The first is the government obviously
4 has an obligation to produce exculpatory evidence. We
5 haven't moved away from that. If anything, it's been
6 reinforced by the Due Process Protections Act warning that
7 the Court is now required to give at every initial
8 appearance, which basically reminds the government of its
9 duty and of the potential consequences that can be imposed
10 if it's not imposed.

11 The second is if there is a motion filed to
12 suppress the search warrant, it's limited to the four
13 corners of the affidavit. The government cannot bring in
14 additional evidence to establish probable cause. It really
15 stands on the basis of that document, so the right of the
16 defendant to move to suppress is preserved. It exists
17 independently of any ruling the Court may make in this case.

18 Just two other things. I think the discovery law
19 that's perhaps most relevant here is the controlling
20 First Circuit decision in *United States vs. Goris* about the
21 threshold showing that a defendant must make to obtain
22 discovery.

23 If it's grounded in speculative theory, it's
24 insufficient. And it seems to me that that is reflected in
25 the standard for a *Franks* Hearing, which in order to get a

1 hearing or discovery regarding it, there has to be a
2 preliminary showing, and it has to be substantial that
3 statements made in an affidavit reflect reckless disregard
4 for a truth or an outright falsehood and that such material
5 is or such statements are material to a finding of probable
6 cause.

7 The last thing is -- sorry, two more things. The
8 United States has been working with foreign agencies for a
9 very long time. The United States is in all kinds of
10 treaties with foreign governments maybe for extradition,
11 maybe for mutual legal assistance.

12 I'm not aware of any law that says the existence of
13 such a treaty means that the cooperation between two
14 governments is a joint venture, and certainly the defendant
15 has cited no law in his memo to support that.

16 The last thing I'll mention is I don't want to lose
17 sight of the fact that as required by the Fourth Amendment,
18 probable cause in this case is supported by a sworn
19 statement from an agent. I'm not so naive to suggest that
20 that means that every single sworn statement is absolutely
21 true. People make mistakes, people make intentionally false
22 statements, and I recognize that, and I think the law does,
23 too, by allowing for discovery when there is a substantial
24 preliminary showing that that is the case.

25 But in my humble estimate, that is a -- that's a

1 profound piece of paper. It's a crime to lie on a sworn
2 statement. It's perjury. It opens up people to all kinds
3 of adverse consequences, and I would note that our entire
4 system in many ways depends on people taking that oath
5 seriously, whether it's at a hearing, whether it's at a
6 trial, whether it is in an affidavit.

7 So I'm not particularly sympathetic to the view
8 that you can't believe anything in an affidavit, and I'm not
9 saying that Mr. Kiejzo is making that argument here, but I
10 do think it's tied in with a number of arguments that are
11 made, so with that as a preface, Ms. Gant, I really
12 struggled with this motion. I struggled candidly to see the
13 merits of it almost at all. I couldn't get away from the
14 idea that everything or nearly everything struck me as just
15 base speculation.

16 You know, if this turns out to be true, this is
17 going to be helpful to the defendant. I'm fine with that.
18 I'm fine with the link that's made as to how something could
19 be helpful to the defendant. You know, if it turns out, for
20 instance, the U.S. Government was very involved in this
21 investigation, this is a joint venture, it would be very
22 helpful to the defendant, but in a manner of speaking, if
23 you don't mind the analogy, that's kind of the distance
24 between second base and third or first base and second. The
25 problem that I have here is the distance between home plate

1 and first base that takes it out of the equation, and I'm
2 struggling to understand what false statement or what
3 evidence you have that suggests that any of this, any of the
4 suppositions, or to use what I characterize as speculation,
5 has any basis, so that's where I am, and that's what I need
6 you to address. If it's helpful, we can go through some of
7 these. I really don't want to go through all of them.

8 MS. GANT: And I don't intend to go through all of
9 them, but I have a couple of I think points that might speak
10 both directly to the principles that the Court laid out at
11 the beginning of this hearing and also the Court's concerns
12 and the defendants' disagreement with the characterization
13 that this is resting on kind of base speculation.

14 It's the defendant's position that -- first I want
15 to thank the Court for continuing the matter from
16 previously.

17 THE COURT: No problem.

18 MS. GANT: I do apologize for that.

19 THE COURT: That's okay.

20 MS. GANT: It's the defendant's position that the
21 request of the discovery goes to the heart of whether or not
22 the search warrant was based on reliable information
23 provided by the foreign law enforcement tip and that
24 ultimately relayed from an as yet unnamed foreign law
25 enforcement agency and whether the representations made by

1 the affiant for the search warrant were mischaracterizations
2 based on that information.

3 One thing that the Court doesn't have in the
4 pleadings is a representation made by the government to
5 counsel in the interim of these rescheduled hearings, and
6 that is that the foreign law enforcement agency who seized
7 the server back in June, 2019 was not the foreign law
8 enforcement agency that provided the tip and did not even
9 originate from the same country that the government has
10 assured us is bound by the rule of law, the same rule of law
11 that it relies upon to justify the warrant as --

12 THE COURT: Okay, so let's take that. What shows
13 that that statement is false?

14 MS. GANT: Well, it's not an issue of being false,
15 it's completely omitted from the affidavit. The affidavit
16 doesn't even disclose that it was a foreign law enforcement
17 agency distinct from the one that provided the tip that
18 seized the server. There's no information --

19 THE COURT: Well, it doesn't say that it was one in
20 the same that seized the server and that provided the tip.

21 MS. GANT: It implies that it was. The
22 affidavit --

23 THE COURT: That's your reading on it, but it does
24 not say that, Ms. Gant.

25 MS. GANT: So I think that the Court ultimately has

1 a different factual record here, at least based on the
2 identity of the server being seized by a different foreign
3 law enforcement agency than, for example, the Court did in
4 *Bateman* or in the Eastern District of Virginia case, but
5 teasing out the import of the --

6 THE COURT: Okay. Well, just -- you're now talking
7 about something that's out of the four corners of the
8 affidavit.

9 MS. GANT: So I think it goes to first the
10 sufficiency of the tip, the reliability of the tip, and then
11 I think it goes to a question of a *Franks* issue, and I can
12 address them kind of in turn.

13 Is it possible for me to go this podium?

14 THE COURT: Yes, that's fine.

15 MS. GANT: My glasses are fogging as I look down.

16 THE COURT: I have the same issue. I don't know if
17 we can take our masks off.

18 MS. GANT: I'm okay with keeping it on if that's
19 okay.

20 THE COURT: Okay, that's good.

21 MS. GANT: So I think the question of the identity
22 of the foreign law enforcement agency that seized the
23 server, and the government will correct me if I'm wrong,
24 that not even this U.S. Attorney's Office knows what the
25 foreign law enforcement agency or country was who seized the

1 server.

2 I don't know whether or not Agent Moynihan knows, I
3 don't know whether FBI knows, but my understanding from
4 Ms. Noto is that the government does not know who the
5 foreign law enforcement agency who seized the server was.

6 Now, the representations made in the search warrant
7 affidavit are premised on the foreign law enforcement agency
8 who provided the tip.

9 THE COURT: Right.

10 MS. GANT: Their assurance, which the government
11 asks us to take at face value that it did not interfere with
12 any computer in the United States, that only applies
13 specifically to that foreign law enforcement agency's
14 collection and obtaining of the data, specifically the IP
15 address, but the source of that IP address and ultimately
16 how it was maintained, how it was collected, how it was
17 turned over is critical to the issue of the reliability of
18 the tip, and no assurances have been made that there was no
19 U.S. involvement in the foreign law enforcement agency who
20 seized the server.

21 THE COURT: In other words, what you're saying is
22 if it turns out, if it turns out that the foreign law
23 enforcement agency does not observe a rule of law that they
24 did tap into servers in the United States or computers in
25 the United States to get this information, if all that

1 happens, that would show that the tip is not reliable?

2 MS. GANT: So I think two things.

3 THE COURT: Could you just answer my question?

4 MS. GANT: Well, two things in response to that. I
5 don't know that it's predicated on that because the truth is
6 the Court has a complete dearth of information and can't
7 conclude one way or the other about the reliability of the
8 tip.

9 THE COURT: Great, so there's your argument when
10 you go to the suppression hearing, Judge, you don't have
11 enough information to evaluate the reliability of the tip,
12 you don't know what country seized the computer, you're
13 relying on an intermediate, if I understand your argument,
14 intermediate law enforcement agency, i.e., the [REDACTED]
15 [REDACTED]'s representation that that country follows a
16 rule of law, that that country did not access computers, and
17 that's an insufficient basis to credit the tip that you got
18 from the a [REDACTED].

19 MS. GANT: So that that country being the country
20 of the [REDACTED] not the country that
21 ultimately -- I think the circumstances at least the way it
22 could be presented in a motion to suppress --

23 THE COURT: We got seizure, we got the party that
24 passed the tip, i.e. --

25 MS. GANT: Right.

1 THE COURT: -- the [REDACTED], and then we have the
2 United States that receives the tip.

3 MS. GANT: Right. If we analogize the tip from the
4 [REDACTED] to the United States, essentially let's just use kind of
5 plain analogy of a confidential informant, we don't have a
6 confidential informant providing information to the FBI or
7 the HCA or the U.S. Government about information that it
8 collected. It ultimately is we got this information from
9 somebody else, no information as to how they got it and what
10 circumstances, what methodology was used or anything like
11 that.

12 THE COURT: Well, hang on. We don't know that. We
13 don't know what information the [REDACTED] has. We only know what
14 they gave us, but that brings me back to my point, so you
15 have what you need to go before Judge Hillman and say the
16 magistrate judge assigned this was not paying attention, the
17 tip is not reliable because all of this information
18 is -- was not in the hands of the government, they just took
19 an at face representation, if you will, that this IP address
20 on this particular date in May of 2019 accessed these child
21 porn websites.

22 MS. GANT: So I think in terms of being able to
23 argue that the Court just didn't have the information to
24 assess the reliability of the tip, perhaps we can argue that
25 in the absence of that provided by the government, but the

1 other issue that's raised here, especially in the context of
2 *Valdivia* and in the context of not knowing who this foreign
3 law enforcement is who conducted the seizure, we don't know
4 whether or not there was an intermediary between the [REDACTED] and
5 the law enforcement agency who seized the server such that
6 that's even a broader kind of international chain, but the
7 issue is --

8 THE COURT: Well, so what?

9 MS. GANT: Well, I think the issue is that we don't
10 know, especially under *Valdivia* under circumstances that
11 would shock the conscious first whether or not the U.S. was
12 involved with this other foreign law enforcement agency in
13 the seizure and what was done in that respect.

14 THE COURT: Right. See, that's speculation though,
15 Ms. Gant, that's the problem that I've had. I understand
16 your argument, but you're saying, Judge, if it turns out
17 that the law enforcement agency that seized this computer
18 does not follow rule of law, they ignore everything, they
19 have no search and seizure rules or anything like that, if
20 all that turns out to be -- if it turns out to be true, then
21 I have an argument to make, and my argument is that that tip
22 is unreliable.

23 First of all, I'm not sure that that logic works,
24 but putting that aside, that's a great big if. What is -- I
25 mean, if you can get discovery on the basis of it's possible

1 that the law enforcement agency does not follow the rule of
2 law, therefore I'm entitled to discovery, we don't need
3 discovery rules, we don't even need *Valdivia* or any other
4 exception to the extraterritorial scope of the Fourth
5 Amendment because the government would have to turn over
6 absolutely every single piece of information that's out
7 there because of the possibility that you are raising.

8 MS. GANT: Well, I don't think that this is an
9 abject speculative inquiry, as the Court would suggest. I
10 think, ultimately, and maybe this is a problem that the
11 defense has generally with what we are cabined into in terms
12 of laying out the argument here.

13 I do think that *Goris* is controlling on this, but
14 *Goris* says that the defendant has to show some indication,
15 not a substantial threshold, like the Court laid out in its
16 principles at the beginning of this hearing, and the
17 government's opposition, I think, principally rests on what
18 appears to be the Court's position here, which is this
19 characterization of the defendant's request for discovery is
20 speculative.

21 THE COURT: Well, I'm just looking at the words of
22 *Goris* that the showing has to significantly alter the
23 quantum of proof in the defendant's favor.

24 MS. GANT: Right. And preceding that, it says it
25 requires some indication that pretrial disclosure of the

1 information sought, and so I think that --

2 THE COURT: Sorry, pretrial disclosure of the
3 information? I missed the last word.

4 MS. GANT: Then it goes into the quote that your
5 Honor just said, that would have altered the quantum of
6 proof in the defendant's favor.

7 THE COURT: Okay. So you want to argue some
8 indication?

9 MS. GANT: Correct.

10 THE COURT: What's the some indication? Let's talk
11 about the unknown law enforcement agency that seized the
12 server. What's the indication that they don't follow the
13 rule of law?

14 MS. GANT: Well, I don't know that that is the
15 required showing here. I think that the required showing is
16 that disclosure of the information about the identity of the
17 tip because this is now really just a question of where the
18 tip originated from. Even preceding the issue of, you know,
19 getting into the circumstances of the seizure and the
20 collection of the data.

21 THE COURT: Please don't because you're going to
22 confuse me. Stay with your point if you want to make it.

23 MS. GANT: Okay. So I think that this goes
24 directly to the origin of the tip. If the origin of the tip
25 is this as yet unnamed foreign law enforcement agency and

1 not actually -- I mean, I think -- I don't even know if I
2 need to say if. The origin, the source of the information
3 that is ultimately channeled through at least one party to
4 the United States is this as yet unnamed foreign law
5 enforcement agency, that goes to not just *Valdivia*, but it
6 goes to the reliability I think for the reasons laid out in
7 the motion, specifically critical to determine not just the
8 circumstances.

9 THE COURT: I'm not sure that you're right about
10 that. I mean, it strikes me that the source of the tip is
11 the [REDACTED]. They're the
12 ones that sent the tip over to the United States to say this
13 IP address has accessed this computer. The seizure was made
14 by a foreign law enforcement agency that follows the rule of
15 law.

16 MS. GANT: So the information the Court has is that
17 the [REDACTED] bulk warrants for the collection of this data, but
18 the actual data and the --

19 THE COURT: Sorry, say that again. The [REDACTED] issued
20 both warrants?

21 MS. GANT: Bulk, B-u-l-k, your Honor.

22 THE COURT: Oh, okay.

23 MS. GANT: For the collection of this data and then
24 based on that data relayed these intelligence reports that
25 were provided in discovery and were attached, the single

1 page intelligence reports that were attached to the
2 defendant's motion.

3 The problem with that is that in issuing the bulk
4 data for the collection of the data, we don't know where the
5 data came from, so it's one thing for the foreign law
6 enforcement agency to say we obtained this data, we're not
7 going to tell you who from, we're not going to tell you how
8 it was obtained, we're not going to tell you anything about
9 the circumstances of how it was obtained, that's a problem
10 because it goes directly to the origin of the tip.

11 I don't think the [REDACTED] can be characterized as the
12 origin of the tip because they are merely passing on
13 information that was retained by somebody that the
14 government refuses to disclose or at this point maybe
15 doesn't know.

16 THE COURT: But they're representing that it's a
17 foreign law enforcement agency that follows the rule of law.

18 MS. GANT: That's the [REDACTED]. That characterization
19 of the foreign government that follows the rule of law is
20 only applicable to the [REDACTED] who collected the data.

21 THE COURT: Okay.

22 MS. GANT: But omitted in the -- you know, I
23 completely agree with your Honor's characterization that our
24 system depends on, you know, the truthfulness of the
25 affidavits, but courts function as frankly the only check on

1 that, and I think that the key omission here in the
2 affidavit is the identity, not just of the foreign law
3 enforcement agency but the fact that it was distinct from
4 that provided by the tip.

5 The affidavit essentially lays out a timeline and a
6 chain as if it was the foreign law enforcement agency that
7 provided the tip as being the same as who obtained the
8 information.

9 THE COURT: Okay. But how does that make the
10 affidavit then untruthful? Where is the false?

11 MS. GANT: It is a key omission that relates to the
12 reliability of the tip because the reliability of the tip,
13 as laid out in the affidavit, is premised on the belief,
14 representation and understanding --

15 THE COURT: Okay. Well, you're going to make that
16 argument to Judge Hillman. You're on your way. Nobody is
17 stopping you from making that, but --

18 MS. GANT: I think the identity.

19 THE COURT: I don't mean to cut you off.

20 MS. GANT: No, no, that's okay.

21 THE COURT: But I want to stay focused on what is
22 it in the affidavit? I got Agent --

23 MS. GANT: Moynihan, I believe.

24 THE COURT: Moynihan, thank you. I have her
25 affidavit. What is it in her affidavit that is a false

1 statement with respect to what we're talking about right now
2 or a reckless disregard of the truth? She has a tip from a
3 law enforcement agency that the United States works with
4 regularly.

5 MS. GANT: That tip as laid out represented in the
6 search warrant affidavit is one that the affiant represents
7 as having come from information essentially solely from the
8 [REDACTED] and the assurances that the affidavit makes about this
9 country being predicated on the rule of law and this country
10 interfering with the U.S., that is only we now know cabined
11 to the [REDACTED] and the [REDACTED], it is not applicable to the agency
12 or the country, whoever intermediaries there were who seized
13 the server, obtained the data and then related it to the

14 [REDACTED]
15 THE COURT: So is the answer to my question then
16 the false statement in the affidavit is that Agent Moynihan
17 painted this as coming from the [REDACTED] when, in fact,
18 information was coming from another law enforcement agency?

19 MS. GANT: I think partially, yes. The other issue
20 is that --

21 THE COURT: Well, I want to hear the government on
22 that.

23 MS. GANT: Okay.

24 THE COURT: Ms. Noto.

25 MS. NOTO: Your Honor, first, if I could just

1 answer the question that came up a little bit earlier to the
2 extent that this is important to the Court, the
3 United States does know the name of this foreign law
4 enforcement agency that was seizing.

5 THE COURT: I don't think that matters.

6 MS. NOTO: I don't agree with the characterization
7 that the affidavit of Special Agent Moynihan either implies
8 or states that the tip FLA was the only law enforcement
9 agency involved.

10 I don't think that there is an omission there that
11 makes the tip unreliable. What it says is that the foreign
12 law enforcement agency that provided the tip affirmed that
13 they had not interfered with a computer in the United States
14 in order to conduct their investigation leading to the tip
15 coming to the United States.

16 THE COURT: Can I get the first part of that just
17 one more time? If you want to just read it out of there,
18 that's helpful. I can try pulling it up. What is it,
19 Exhibit F to your motion?

20 MS. NOTO: Yes, the Exhibit F is the affidavit.

21 THE COURT: Right. Isn't that what we're talking
22 about?

23 MS. NOTO: Yes.

24 THE COURT: Okay, good. Okay. Go ahead.

25 MS. GANT: It's paragraph 33.

1 THE COURT: Okay. Do you want read it?

2 MS. GANT: U.S. law enforcement personal did not
3 participate in the investigative work through which in this
4 case referring to the [REDACTED] identified the IP address
5 information provided by the [REDACTED].

6 There's no representation that they didn't
7 participate in -- it's cabined into the investigative work
8 that produces the information that, collected the
9 information as opposed to the U.S. did not participate in
10 the seizure of the server, the collection of that
11 information, the --

12 THE COURT: All right.

13 MS. GANT: The deployment of the investigative
14 technique to identify the IP addresses.

15 THE COURT: All right.

16 MS. GANT: And that goes I think to the joint
17 investigation of this as yet unnamed.

18 THE COURT: I'll give you say chance to argue that.

19 MS. GANT: Right.

20 THE COURT: I guess, Ms. Gant, just in the interest
21 of doing what is my job and not Judge Hillman's, since
22 that's what's in the affidavit, why do you need discovery?

23 MS. GANT: I think it goes to the question of
24 whether or not there was a Fourth Amendment search by the
25 United States, and I shouldn't say I think. This is the

1 argument on this point. I think there are several points,
2 but on this point, the as yet unnamed foreign law
3 enforcement agency, which the government --

4 THE COURT: -- knows but they haven't disclosed to
5 you?

6 MS. GANT: Right, and I apologize but the last time
7 I spoke with Ms. Noto, I thought the government didn't know.

8 THE COURT: That's all right.

9 MS. GANT: But the way that it's characterized in
10 the affidavit, all the representations about what the U.S.
11 did or did not do preceding the tip only applies to the [REDACTED],
12 it does not apply, and the affidavit does not disclose or
13 even indicate to the Judge that issued the warrant that it
14 was a different FLA who seized the server.

15 THE COURT: Yeah, but it does, at paragraph 33, if
16 I remember correctly, and if I do, it's going to surprise
17 me, at paragraph 33, does it not say that the U.S. had no
18 involvement, I'm paraphrasing, didn't participate in the
19 investigation that led to the -- no, it doesn't say that?

20 MS. GANT: No, it says that didn't participate in
21 the investigative work through which the [REDACTED], referring to
22 the one who collected the data, identified the IP address.
23 It doesn't say broadly didn't participate in the --

24 THE COURT: I think that's the same thing. Read
25 that one more time.

1 MS. GANT: Again, just for the record, this is page
2 33 of the affidavit.

3 THE COURT: Thank you.

4 MS. GANT: U.S. law enforcement personnel did not
5 participate in the investigative work through which [REDACTED]
6 referring to the [REDACTED] identified the IP address, information
7 provided by [REDACTED]

8 THE COURT: I don't know, that sounds pretty good
9 to me.

10 MS. GANT: Well, that makes sense your Honor
11 because -- not the sounding pretty good part but the
12 characterization here because it's clear from the tip
13 documents that the [REDACTED] issued bulk warrants, and the U.S.
14 played no part in that, that the U.S. issued bulk
15 warrants -- I'm sorry, that the [REDACTED] through the [REDACTED] issued
16 bulk warrants, we don't know to whom, but that the U.S.
17 didn't participate or request the issuance of those warrants
18 or whatever.

19 That's the investigative work that they're talking
20 about, we issued a warrant and we got this information, but
21 that sentence that is directly quoted from paragraph 33
22 doesn't say that the U.S. did not have involvement preceding
23 that warrant through which the [REDACTED] ultimately --

24 THE COURT: Can I just ask though if the
25 United States -- I don't know that that's a logical reading

1 of that. If the U.S. participated in the investigation that
2 led to the seizure of the server and the obtaining of the IP
3 addresses, why would we be getting, we, the United States,
4 why would we be getting a tip from the [REDACTED] about our own
5 investigation? It would be like the [REDACTED] telling us, you
6 know, there's drug dealing going on in Maine South, it's
7 like, great.

8 MS. GANT: Well, I think, first of all, that is
9 also predicated on an if, right, which demonstrates the true
10 dearth of information that we have here, but also I think
11 the issue is that this is and has functioned, that this tip
12 has functioned here and in many other cases in which the
13 cases have been prosecuted arising out of this tip as
14 effectively an end run around the not just Fourth Amendment
15 questions and everything like that.

16 THE COURT: I get that argument, but I don't buy
17 it, but I still want you to answer my question, and I don't
18 think you have.

19 MS. GANT: Can I clarify? Is your Honor's question
20 why would it make sense for the U.S. to have participated in
21 the seizure and then gotten the information from the [REDACTED]?

22 I think, first, the [REDACTED] issues bulk warrants, and
23 the United States does not. The [REDACTED] Investigatory Powers
24 Act --

25 THE COURT: No, my question -- it is my question,

1 but for that reason, I just did not think it was a logical
2 or a fair reading of what's there, but --

3 MS. GANT: Your Honor, respectfully, I think it's
4 the only reading that can be made from that because it's so
5 cabined and restricted specifically to the investigative
6 work that the [REDACTED] did in issuing the bulk warrant to get
7 this information.

8 Now, the [REDACTED] --

9 THE COURT: All right. But under your scenario
10 then the [REDACTED] is giving a tip to the United States about
11 information that the United States helped develop?

12 MS. GANT: Possibly. I mean, I think that is a
13 likely scenario, and the problem with that is that let's say
14 it was a situation, and I don't want to engage in a
15 hypothetical here because I think that may just support your
16 Honor's opinion that this is speculation, but I think the
17 problem here is that we're limited by the information that
18 the government has provided to us that they say they know
19 but they have not provided to us.

20 THE COURT: But, Ms. Gant, just to interrupt you
21 there though, that's not a small point. In other words, and
22 I don't mean, I really appreciate the effort that you're
23 making here on this, but so I don't say this in a demeaning
24 way, but the argument strikes me very much as if there's
25 helpful information out there, that's going to be helpful to

1 us, and, therefore, we should get another discovery and,
2 again, the problem I have is going back to this analogy, I
3 don't see you getting from home plate to first base, in
4 other words, if it's out there, if these are false
5 statements, it's like, okay, but I have a sworn statement
6 that they're not, that this is true.

7 MS. GANT: So I understand, and that's probably the
8 easiest baseball analogy for somebody who doesn't understand
9 the rules of baseball to get.

10 THE COURT: Thank you.

11 MS. GANT: But I would say it is a totally and
12 reasonable and logical explanation and scenario for the U.S.
13 to have participated in the seizure of this server, and the
14 only way that the U.S. then would not be subject to Fourth
15 Amendment seizure and search was is if somebody like the
16 [REDACTED] with a broad power to issue bulk warrants under the
17 investigatory powers act that is thoroughly explored in the
18 motion gets the information from the server, that's the way
19 potentially that the U.S. avoids deploying the NIT that
20 became fatal and at issue in some of the playpen cases, and
21 I think that that is a problem when the government isn't
22 disclosing who the foreign law enforcement agency is, and
23 that I think is a broader point.

24 I think that there are missing pieces of discovery
25 that are cross-referenced in terms of, for example, on

1 page 19 of the defendant's motion, it outlines specific
2 missing documentation where the tip, I'm sorry, where the
3 affidavit characterizes the, if I could go to the 19th page
4 of this, where the affidavit characterizes the tip
5 documents.

6 THE COURT: So where are we on page 19? I see a
7 big paragraph in the middle.

8 MS. GANT: A big paragraph in the middle with the
9 underlined.

10 THE COURT: Yeah, right. I'm just going to read,
11 specifically the affidavit at paragraphs 31, 32 indicates
12 that the FLA notified U.S. law enforcement that a specific
13 IP address was used to access online child substance abuse
14 and exploitation material via a website that the foreign law
15 enforcement agency named and described as website 2 and 3
16 respectively and that the FLA provide further documentation
17 naming the website as website 2 and 3 respectively, which
18 the FLA referred to by its actual name.

19 Okay. So I'm there.

20 MS. GANT: Okay. So that deals specifically with
21 Exhibits G and I to the defendant's motion, specifically the
22 NCA reports that appear to be kind of copy and paste of IP
23 address was used to access a website.

24 THE COURT: This?

25 MS. GANT: That's I think Exhibit I.

1 THE COURT: Okay. So this, the letter?

2 MS. GANT: That's the letter that identified the
3 use of the bulk warrants. Your Honor just had it. It's a
4 small single paragraph.

5 THE COURT: Small single paragraph.

6 MS. GANT: That says that on such-and-such date, a
7 bolded IP address was used to access a website.

8 THE COURT: Oh, okay. Got it.

9 MS. GANT: So comparing that with the affidavit,
10 the affidavit he references tip documents that says that the
11 FLA named the website --

12 THE COURT: Yes.

13 MS. GANT: -- in that document. There's no name of
14 the website in that document.

15 THE COURT: Does it say it named it in this
16 document?

17 MS. GANT: So it says that, "was used to access
18 online child sexual abuse and exploitation material via a
19 website that the FLA named and described as websites 2 and
20 3," and then that they further provided documentation naming
21 the websites as websites 2 and 3, which is Exhibit I, the
22 one that your Honor had first pointed out.

23 So, that in and of itself demonstrates that there's
24 missing documentation. There is a question as to whether or
25 not the tip documents that have been provided by the

1 government are what was referred to in the affidavit, and
2 that's critical to determine whether or not the
3 characterization in the affidavit is correct because so far,
4 it's not, and I'm not accusing Agent Moynihan of willfully
5 misleading the Court or lying to the Court, but ultimately
6 the tip documents don't reflect in the affidavit at
7 paragraphs 31 to 32.

8 THE COURT: Okay. Hang on a second. Let me digest
9 that.

10 MS. GANT: Maybe this is an easier way to say it.
11 How do you get from that single page, single paragraph
12 identification of an IP address to the documents that name
13 the websites? There's no cross-reference to either of them
14 to suggest to --

15 THE COURT: Well, I don't know that's true. Mine
16 has come in blacked out.

17 MS. GANT: That's the item that I was provided, so
18 that's all I can say, the discovery that the government has
19 provided.

20 THE COURT: Okay, that's a little bit of
21 speculation. That's where we're running into a problem.
22 Ms. Noto, is it possible to -- I realize -- well, is it
23 possible to take out some of these deletions so that the
24 reference -- so I'm looking at -- I don't know what to call
25 it, this document?

1 MS. NOTO: Yes.

2 MS. GANT: That's Exhibit I, your Honor.

3 THE COURT: Thank you. I. Is I this two-pager or
4 is one I and one -- is it H and I?

5 MS. NOTO: I believe there's a two-page document.
6 There's almost nothing on the second page. Document H.

7 THE COURT: Oh, okay. Then there's the one -- so
8 one site, one of them names the [REDACTED] and the other one
9 references [REDACTED]?

10 MS. NOTO: That's right.

11 THE COURT: So is there a way to take the
12 redactions out to satisfy the defense about the link? So,
13 as I understand it, I have the communication from the
14 [REDACTED].

15 MS. NOTO: That which has been, if you look up in
16 the top right-hand corner, the Bates number is 93. Is that
17 what you're looking at?

18 THE COURT: No, I don't have the Bates numbers.

19 MS. GANT: I think for ease of labeling the
20 exhibits, I put Bates numbers on the bottom.

21 THE COURT: Oh, sorry. Well, I have one that
22 doesn't have a Bates number on it. I have one that has
23 0092, and then there's a --

24 MS. GANT: I think that's Exhibit G or H.

25 THE COURT: Okay.

1 MS. NOTO: Either way, there are two nearly
2 identical tip documents that are in that form, the single
3 paragraph identification of an IP address, they're just like
4 minutes apart, it's the same days, just minutes apart.

5 THE COURT: In other words, I have a letter that
6 says that on this date at this time this IP address was used
7 to access the website.

8 MS. NOTO: That's correct, and if you see the
9 description of that website there --

10 THE COURT: In that letter, okay.

11 MS. NOTO: Yes, with an explicit focus on
12 facilitation of sharing child abuse materials, emphasis on
13 indecent materials of boys, if you then look at the document
14 in Exhibit I that has a Bates number of 100, that lists some
15 of the named videos.

16 THE COURT: Yes.

17 MS. NOTO: It's the identical description, which I
18 think it's almost practically copy and pasted into the
19 paragraphs 32 and 33.

20 THE COURT: Right, I see that, I see that identical
21 language.

22 MS. NOTO: So while it is true that paragraph I
23 think it was 31 does not say I looked at more than one piece
24 of paper in order to compile this paragraph.

25 THE COURT: I understand that.

1 MS. NOTO: The points -- the language is lifted
2 virtually identically. There's nowhere that says, which is
3 what I think the defendant is speculating that, therefore,
4 there must be another piece of paper that has the entirety
5 of paragraph 31 laid out on the same tip document, but even
6 if there were yet another piece of paper that restates this
7 tip in a different way, I don't see how that advances the
8 defendant's argument at all. It's primarily speculation
9 that this document exists.

10 THE COURT: Ms. Gant doesn't need me to be her
11 advocate, but I think what I understand her to be saying is
12 the affidavit says that the tip expressly identified the
13 website by name, okay, what we're calling website 2 and 3.

14 MS. NOTO: Yes.

15 THE COURT: In connection with the tip that on this
16 day at this time this IP address accessed it. I completely
17 understand your argument, Ms. Noto, that you can look at two
18 pieces of paper, and I assume, I don't know, I assume when
19 the agent is looking at it, not everything that is blacked
20 out here was blacked out.

21 My question to you is does the government object to
22 unblacking out something either on the letter from the
23 [REDACTED] or from the report Bates Number 100
24 that links these two, I guess, for instance, would show
25 maybe it's the same [REDACTED] project? On the letter, it says,

1 "██████ project blank." Maybe that project number appears on
2 100. I'm just asking if it can be done.

3 MS. NOTO: In all candor, your Honor, I don't
4 remember what everything is that is redacted here to the
5 extent that I even saw it myself, so I would have to look to
6 see what that is in order to know what to remove the
7 redaction from.

8 MS. GANT: And I do want to say --

9 MS. NOTO: I don't think that that's a problem, but
10 without remembering what it says there, I can't tell, for
11 example, that I would unredact the operation name or the
12 project name. I can't remember.

13 THE COURT: Right.

14 MS. NOTO: Exactly what it is that might line it
15 up, except in my conversations with Special Agent Moynihan,
16 she explained that she read the description on Bates 100,
17 where it has the name of the website --

18 THE COURT: Right.

19 MS. NOTO: -- and she read the tip that's on Bates
20 92, which gives the same description and understood that to
21 mean this IP address access that website.

22 Now, I don't think even Ms. Gant is suggesting
23 this, but I think it should be clear that websites 1, 2, 3,
24 those are all names that HSI has used in their affidavits in
25 the United States.

1 THE COURT: Right, I get that.

2 MS. NOTO: The tip document never calls them
3 website 2 or 3.

4 MS. GANT: I agree with that. I have no quibble
5 with that. I think my issue is, first, we're subject to a
6 very strict protective order, and so I don't think redaction
7 would harm -- I don't think unredacting those specific
8 documents to demonstrate a link, if there exists one, would
9 create any harm.

10 But, second, to the extent the government hangs
11 their hat on this quote, unquote, "identical language," that
12 language describes nearly every hidden service site on Tor.

13 There's virtually no child abuse and sexual
14 exploitation material that doesn't fit those specific
15 parameters. Granted, the two intelligence documents are
16 attached different, but the government says that there's no
17 evidence in the affidavit that suggests that there was more
18 than one piece of paper, but there is in paragraphs 32, it
19 says that the FLA provided further documentation naming the
20 website, and earlier it says that the original tip document
21 named and described the website, but to me, aside from that
22 definition, which could apply to every single hidden service
23 site, there's no link between the two to suggest that it
24 was --

25 THE COURT: You know, I'm not sure about that

1 because doesn't the affidavit, you know, it includes a few
2 paragraphs, I don't remember exactly where it is that an
3 agent went to the site, they looked at it, and these were
4 some of the videos that were on it.

5 MS. GANT: Correct.

6 THE COURT: If I could just finish, and those
7 videos have names, and aren't those names names that are
8 like under the "[REDACTED]"?

9 MS. GANT: I think some might be, your Honor, but
10 the problem is --

11 THE COURT: Right, so doesn't that link it up?

12 MS. GANT: No, your Honor, because the tip is
13 coming from the FLA, and the [REDACTED] is the one that says
14 that -- I mean, the affidavit says that the [REDACTED] named and
15 described the website in connection with used to access
16 online child sexual abuse and exploitation material via a
17 website that the FLA named and described. That larger tip
18 document naming "[REDACTED]" doesn't have Mr. Kiejzo's IP
19 address, it doesn't have anything connected to the date and
20 time, and the videos that were allegedly corrupt --

21 THE COURT: I think you can make that argument to
22 Judge Hillman and say therefore there's a break in the
23 probable cause. I mean, who cares if you're right or wrong,
24 wouldn't you rather not know? I mean, if they've turned the
25 information over to you, you'll lose the argument.

1 MS. GANT: Well, if it exists, that's the problem.

2 THE COURT: Well, then see we're back to the -- I
3 get that, but I'm not comfortable with the discovery motion
4 that is kind of if it whatever because if that standard
5 applies, then we don't need discovery rules.

6 MS. GANT: So I think that this is maybe a problem
7 that I, maybe many defense attorneys have with the standard
8 that is put forth on defendants for the burden of discovery,
9 and ultimately I think it's a frankly wholly unfair one
10 because ultimately the government is able to withhold
11 evidence that is relative and material to the filing of a
12 *Franks* motion and say, well --

13 THE COURT: Ms. Gant, you recognize that you are
14 arguing to the lowest federal court in -- I mean, lowest
15 level of the federal court that there exists.

16 MS. GANT: I know, I know.

17 THE COURT: It's a great argument, and it should be
18 taken up with Congress or --

19 MS. GANT: Well, there's one way to start it here,
20 your Honor, but I don't think the Court needs to have that
21 starting position in order to hear the defendant out on
22 several different requests, but to the extent that the Court
23 can be assured that even just unredacting some of the
24 documents that have been provided, whether it wants to do
25 that subject already to the extremely restrictive protective

1 order or to view the documents in camera that are requested
2 by the defendant and then take it from there.

3 I don't need to belabor kind of all of the points
4 and specific requests. They are fully briefed and
5 enumerated and explained in the motion, but I think there
6 was just one thing that I wanted to address. The same kind
7 of missing link exists with Request Number 15, the
8 defendant's motion, page 23 for the Verizon records.

9 THE COURT: Yes.

10 MS. GANT: I don't necessarily need the Court to go
11 there, I just wanted to point out that it flows from the
12 same kind of missing link and documentation that we were
13 just talking about.

14 I really think that that is -- I think everything
15 is fully briefed. I think the Court has the defendant's
16 arguments, and I think that ultimately the specific cases
17 that the government cites to in trying to argue that the
18 defendant's motion with respect to the *Franks* Hearing is
19 speculative are distinguishable.

20 I mean, I think the *Marcellus* case, which is the
21 Eastern District of New York case, the sole basis in that
22 case was to garner support for a *Franks* motion, and there
23 was, I think, a much greater level of speculation in that
24 case that dealt with kind of omissions and these subsequent
25 reauthorization requests that were included in the original

1 materials, and the defendant just raised some like
2 speculation that there was some lack of detail about the
3 confidential source, and that's not what we have here.

4 To the extent that I was able based on limited
5 information that the government gave me, I attempted to do
6 significant research on the [REDACTED], on the Investigatory Powers
7 Act, how the tip was relayed to the U.S., and ultimately
8 identified areas which the defendant would need to file not
9 just a *Franks* motion but to make an assessment about the
10 credibility of the tip and to make an assessment about the
11 reliability of the tip, and that goes to the heart of the
12 methodology question that is fully briefed in the motion.

13 So unless the Court has additional specific
14 questions, I'm happy to -- oh, the only other thing I wanted
15 to say, there is mention in the -- and this goes to the
16 missing documentation piece which may rest under those
17 redacted materials from the tip documents.

18 In the government's discovery responses, which are
19 attached to the motion, the government for the first time
20 essentially claimed that the defendant had logged on to one
21 of the websites, one or both of the websites, which would
22 suggest the creation of an account, the creation of a
23 password and the purposeful and intentional visit to a
24 website that is depicted in the tip documents.

25 But that logged-on language, which suggests the

1 creation of an account is nowhere in any of the other
2 discovery, it just seems to be a representation made by the
3 government.

4 THE COURT: Exactly. In other words, is Exhibit D
5 an answer to your original discovery?

6 MS. GANT: That's right, and in an answer, they
7 imputed this new action on the part of Mr. Kiejzo, which is
8 not borne out in any of the materials provided thus far.

9 THE COURT: But, I mean, the affidavit, I had
10 checked it, the affidavit says the tip is that this IP
11 address accessed these accounts. It doesn't say logged in,
12 in fact, it says elsewhere that you can visit or access
13 these sites, if you will, without creating an account or
14 logging in.

15 MS. GANT: So the materials that were provided by
16 the government that is cited in the enumerated requests and
17 partially at page 19 indicates that the IP address to which
18 they attribute Mr. Kiejzo had accessed or logged into
19 website 2 and 3, and in order to access much of the
20 material, at least with respect to one of the websites,
21 there would have had to have been the creation of an
22 account, so I've asked for that account information, which
23 the government has declined to provide, and to access the
24 website vs. access the material I think is an important --

25 THE COURT: But that doesn't mean that the IP

1 address did not access it.

2 MS. GANT: Well, there's a different point here,
3 and I think this is actually a critical point, so I'm glad
4 to end on this. The government's representations in the
5 affidavit and in the tip documents about what your Honor
6 just said, which is you can get some of the material outside
7 of the creation of the account, for one of the websites, and
8 I'm happy to have the Court correct me if I'm wrong, you
9 need to be logged into the account, so if the government has
10 evidence that Mr. Kiejzo did not log onto the account and
11 then was not able to access the material that is laid out in
12 the tip document, that's exculpatory.

13 THE COURT: I agree with you, and that would have
14 to be turned over.

15 MS. GANT: And that goes to a misstatement in not
16 just the tip documents but the affidavit that he accessed
17 material.

18 THE COURT: Okay.

19 MS. GANT: So I'm happy to end on that unless the
20 Court has additional questions.

21 THE COURT: No.

22 Ms. Noto, let me hear you on why is the
23 government's response had access to or logged into website 2
24 and 3?

25 MS. NOTO: Your Honor, I think that that may be

1 just poor phrasing on my part. I did not intend to imply
2 that access and logged in were equivalent, given how these
3 websites were accessed. One way of accessing is to create
4 these identities. The question that the defendant posed was
5 do we have the evidence that Mr. Kiejzo in particular
6 created an account on all the other dates? The
7 United States is not in possession of that information.

8 The only information that we were provided was that
9 the IP address that was linked to his house accessed these
10 websites. We were not provided with specific information
11 about Mr. Kiejzo at all. It was the IP address.

12 This was a residence that was used by both the
13 defendant and his father. The United States is not in
14 possession of the answer to that question. I don't know if
15 the foreign law enforcement agency has more specifics about
16 the person who logged in from that IP address. We do not
17 know that information. It was simply a response to the
18 question do we have information about Mr. Kiejzo logging in.

19 THE COURT: Okay. And am I correct that at least
20 this is what the affidavit says, you can access each website
21 without an account? And I understand that to mean you don't
22 need to log in. In other words, I understand there to be a
23 distinction between accessed or log in. Log in to me means
24 you have an account, you put your name, your credential or
25 whatever, your password and you're in. You can access

1 website 2 and website 3 without logging in?

2 MS. NOTO: Yes, there's what some people would
3 call --

4 THE COURT: That's what the affidavit says?

5 MS. NOTO: That's what the affidavit says. If you
6 look at paragraph 16, for example, it says a review of the
7 initial website two-page revealed a message board with a
8 search bar with two hyperlinks, announcements and important
9 information, and then below that is a link to log in or
10 register.

11 So an individual could access that much of the page
12 without logging in?

13 THE COURT: Right.

14 MS. NOTO: And I think there's very similar
15 language with respect to website 3, that in order to get to
16 the initial page, a person only needs to navigate to that
17 website. Once they arrive there, they have the option to
18 log in, and I'm paraphrasing here, but there are in order to
19 see all of the videos create an account or register are
20 options that are on that initial page.

21 But I don't think the affidavit anywhere says, and
22 I don't have this -- the United States does not have the
23 information that Mr. Kiejzo created an account and accessed
24 on any certain number of days or what was looked at exactly.
25 We don't have that information.

1 THE COURT: By virtue of using log in information
2 to get there?

3 MS. NOTO: That's right. The tip was based on IP
4 address, not based on individual.

5 THE COURT: Right, otherwise you would just say
6 so-and-so logged in? Yes? I mean, now I'm speculating,
7 talk about the kettle calling the pot black.

8 MS. NOTO: But that is my phrasing, access or
9 logged in as an alternative. It is not meant to imply that
10 there is any record out there that shows Vincent Kiejzo
11 logging in. I don't -- that is not something we were
12 provided.

13 THE COURT: Ms. Gant, anything else?

14 MS. GANT: Nothing that hasn't already been fully
15 kind of briefed, your Honor. I appreciate the Court's
16 consideration of this.

17 THE COURT: Yes, sure. I'll think about it a
18 little bit more. I will tell you I'm inclined to deny this
19 in toto.

20 MS. GANT: Does that relate even to the redaction
21 that the government?

22 THE COURT: I was going to come back to that. I am
23 not ordering it, but invite the government just to address
24 an issue, I mean, if you want to go ahead and brief it, go
25 ahead, but I understand the argument is going to be made

1 that the tip that ties the IP address date and time does
2 not -- at least as it's produced to satisfy the defendant,
3 assuming that Agent Moynihan had access to this information,
4 that more closely ties. I understand your argument, and I
5 also think that the names of these individuals --

6 MS. GANT: One housekeeping question, your Honor,
7 just as we close.

8 THE COURT: They could go to Japan, they could go
9 to Ireland, they could go to Massachusetts. I really
10 struggle with the idea that there's some end run going on
11 here to get this information because nobody knows where this
12 goes to. Moreover, IP addresses are not necessarily static,
13 I could have an IP address for six months and then it could
14 change.

15 MS. GANT: So I think the missing critical piece in
16 your Honor's description of events with respect to this as
17 yet unnamed FLA is the how. How ultimately were any IP
18 addresses discovered and usually consistent with *Playpen* and
19 consistent with the cases cited in the defendant's
20 memorandum, it's through the deployment of a network
21 investigative technique that would interfere with computers
22 in the United States.

23 We have no information as to how the IP addresses
24 were identified. We know how they were collected, and
25 that's through the issuance of a bulk warrant in the [REDACTED]

1 but we have no idea how they were identified, whether --
2 (audiotape cut was cut off).

3 THE COURT: Anyway. All right. So go back to the
4 housekeeping. So yesterday I granted the motion to give you
5 45 days.

6 MS. GANT: I appreciate that, your Honor.

7 THE COURT: It goes out to October 29th.

8 MS. GANT: Yes.

9 THE COURT: I'll mull it over the weekend. I think
10 I'm going to deny this motion for discovery. I'm not trying
11 to put more pressure on you, but do you really want to wait
12 until the end of October to file a suppression motion?

13 MS. GANT: So I have been working on it. The
14 problem is that seems to be converging at the same time.
15 I'm preparing a co-defendant-in-custody trial before Chief
16 Judge Saylor that has taken on kind of a mountain of
17 pretrial work including a late stage --

18 THE COURT: All right. So you want October 29th?

19 MS. GANT: Please, your Honor. The only thing I
20 was going to ask in terms of the housekeeping question,
21 that's the date that was set for the initial pretrial, and
22 to --

23 THE COURT: No, so that's been canceled.

24 MS. GANT: Oh, okay.

25 THE COURT: At least, as I understand it,

1 Judge Hillman basically kicked the case back to me, it was
2 creating too much paperwork, so my order from yesterday, and
3 if you don't ride them, that's okay. I didn't read them
4 when I was an AUSA. The September 23rd pretrial conference
5 is canceled. The date for filing is October 29.

6 MS. GANT: Okay.

7 THE COURT: I put a final status conference on that
8 date. You know, if you send me a short joint memo that says
9 it's being filed or it's been filed and the government needs
10 two weeks or three weeks to respond, and we'll look to
11 exclude the time, you can send it back to Judge Hillman,
12 I'll just cancel the status conference. I think I put it on
13 for 9:30 or 10.

14 MS. GANT: Okay. I thought that it had been
15 continued for the initial pretrial on the 29th, and I was
16 just going to ask for a certain date to file.

17 THE COURT: No, it's before me.

18 MS. GANT: Thank you, your Honor.

19 THE COURT: All right. Is there a motion to amend
20 conditions? I'm sorry, did you want to be heard, Ms. Noto,
21 on that, on the housekeeping issue?

22 MS. NOTO: A slightly different housekeeping issue.
23 Once Ms. Gant files the motion, I do believe I'll be on
24 trial at that time. I may ask for a little time to respond,
25 but I can deal with that.

1 MS. GANT: No objection.

2 THE COURT: I'm sure you'll work it out.

3 MS. NOTO: What I was going to ask is that given
4 that some of the materials, some of the details that are
5 covered by the protective order were discussed at this
6 hearing, the recording of today's hearing under seal.

7 THE COURT: I can do that, but do you think you
8 need it? I thought we referred to things fairly, and I made
9 an effort to do this fairly, what's the word kind of
10 categorically? I tried not to -- yes, we did talk about
11 another foreign law enforcement agency.

12 MS. NOTO: And the identity of the foreign law
13 enforcement agency that provided the tip is something we've
14 been asked to keep private as well as the names of one of
15 these websites was mentioned on a couple of occasions.

16 THE COURT: You're right, I did. Well, can we
17 redact the websites?

18 MS. NOTO: If a transcript is made, I'd be happy to
19 suggest.

20 THE COURT: Show it to Ms. Gant. Get the
21 transcript, go through it, agree on what you want to redact,
22 and I'll look at it and grant in a motion.

23 MS. GANT: That makes sense.

24 MS. NOTO: I'm sorry, is that a practical question?
25 Is the transcript automatically created or do we need to

1 order it and pay for it?

2 THE COURT: I think you do need to order it.

3 MS. GANT: I'll order it.

4 MS. NOTO: We'll work that out amongst ourselves.

5 THE COURT: Well, look, take *Goris*, the discovery
6 motions ended up getting appealed. Of course, I have no
7 idea what's going to happen in this case, but if there were
8 a conviction and an appeal, that may be one of the matters
9 taken up on appeal, so I do think it's a good idea to have
10 that record. I guess that's where I'm going with that.
11 It's probably now that I think of it, why I should write a
12 short memo, memorandum on it, whatever decision I do make.
13 Okay. All right. That's housekeeping.

14 So then there was an issue, there was a motion to
15 amend conditions. Has that been dealt with?

16 MS. GANT: Yes, your Honor, I did file an assented
17 to motion. Your Honor allowed it.

18 THE COURT: Okay, great.

19 MS. GANT: All right. Mr. Kiejzo has had zero
20 problems with compliance on conditions of release for over
21 the last year.

22 THE COURT: Okay. All right. Thank you, everyone.
23 We're in recess.

24 MS. GANT: Thank you, your Honor.

25 THE CLERK: The Court stands in recess.

1 (Whereupon, the hearing was adjourned at 3:38 p.m.)

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3 C E R T I F I C A T E
4

5
6 UNITED STATES DISTRICT COURT)
7 DISTRICT OF MASSACHUSETTS) ss.
8 CITY OF BOSTON)
9

10 I do hereby certify that the foregoing transcript,
11 Pages 1 through 49 inclusive, was transcribed by me
12 stenographically at the time and place aforesaid in Criminal
13 Action No. 20-40036-TSH, UNITED STATES of AMERICA vs.
14 VINCENT KIEJZO and thereafter by me reduced to typewriting
15 and is a true and accurate record of the proceedings.

16 Dated September 28, 2021.
17

18 s/s Valerie A. O'Hara
19

20 _____
21 VALERIE A. O'HARA

22 OFFICIAL COURT REPORTER
23
24
25